

Court of Appeals, State of Michigan

ORDER

People of MI v Donnell Walker

Docket No. 266486

LC No. 04-018292

Michael J. Talbot
Presiding Judge

Kirsten Frank Kelly

Christopher M. Murray
Judges

The Court orders, pursuant to MCR 7.205(D)(2), that the circuit court's November 12, 2004 judgment of sentence is VACATED. At no point in these proceedings did defendant enter a plea of guilty or receive a probation violation hearing as required by MCR 6.445(E) and (F). Contrary to the representations of the prosecutor and the circuit court clerk at the November 12, 2004 hearing, and consistent with defendant's representations, via his counsel, at that same hearing, defendant did not plead guilty, and was not found guilty, at the October 6, 2004 arraignment. Instead, at the October 6, 2004 hearing, Wayne Circuit Judge Lita M. Popke specifically stated that a plea of not guilty would be entered, and that the matter would be set for a violation hearing. However, that violation hearing never occurred, and defendant never entered a guilty plea, before being sentenced by Wayne Circuit Judge John William Callahan on November 12, 2004. Sentencing defendant for a violation of probation without a guilty plea, or a finding of guilt following a hearing, violated MCR 6.445(E) and (F), and defendant's due process rights. See *People v Pillar*, 233 Mich App 267, 269; 590 NW2d 622 (1998).

This matter is REMANDED to Judge Popke for further proceedings consistent with this order. Defendant shall be provided a formal violation hearing, or an opportunity to enter a plea of guilty, as provided by MCR 6.445. We do not retain jurisdiction.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

APR 13 2006

Date

Sandra Schultz Mengel
Chief Clerk